

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Anchor Lighting, a California General
Partnership, Thomas H. Simcox dba Tommy's On
Broadway,

Complainants,

vs.

Southern California Edison Company,

Defendant.

Case 02-03-060
(Filed March 27, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
SETTING A PREHEARING CONFERENCE**

Summary

On March 27, 2002, Anchor Lighting, and Thomas H. Simcox doing business as Tommy's On Broadway, (referred to jointly as "complainants") filed a complaint at the Commission against Southern California Edison Company (SCE). The complaint alleges that SCE failed and refused to provide the complainants with the 10% rate reduction that was mandated in Assembly Bill (AB) 1890 (Stats. 1996, ch. 854), and incorporated in Public Utilities Code § 330(w) and § 368(a).¹

¹ All code section references are to the Public Utilities Code.

Today's ruling sets a prehearing conference for September 24, 2002, at 10:00 a.m., in San Francisco. At that time, the parties should be prepared to discuss whether the Commission should proceed with the issuance of a decision on whether a final determination of the issues raised in the complaint has already been made in Decision (D.) 97-09-056 [75 CPUC2d 555].

Background

In order to gain a better understanding of the procedural issues to be discussed at the prehearing conference, a brief summary of the parties' positions is helpful.² The subject matter of this complaint is the basis of a civil action that was filed by the complainants against SCE in the Los Angeles Superior Court on April 10, 2001, Case No. BC 248372. The complainants allege in the civil action that SCE improperly and wrongfully failed to provide the 10% rate reduction to all small commercial customers as required by AB 1890. SCE filed a demurrer to the civil action alleging that this Commission has jurisdiction over the dispute. According to the complaint, the Superior Court "sustained the demurrer challenging the Court's jurisdiction as to certain causes of action, namely, violation of Public Utilities Code Section 2106 (predicated upon a violation of Public Utilities Code Section 330 et seq.), negligence in billing, common counts for overcharging, unjust enrichment based upon improper collections, and constructive trust over ill-gotten gains." The causes of action alleging violations of the Unfair Competition Act and fraud were stayed by the Superior Court pending a determination by the Commission of whether §§ 330 et seq. was violated by SCE in denying the complainants the 10% rate reduction.

² The summary does not list all of the arguments contained in the complaint and the answer.

D.97-09-056, which was adopted by the Commission on September 3, 1997, approved a financing order for SCE which allowed it to finance \$3 billion in transition costs, as authorized in AB 1890, through the issuance of rate reduction bonds. The rate reduction bonds allowed SCE to provide a 10% rate reduction through the rate freeze period to residential and small commercial customers. Ordering Paragraph 17 of D.97-09-056 specifically stated:

“To the extent that rate reduction bonds have been issued, beginning January 1, 1998, Edison shall reduce the rates to eligible residential and (as defined in PU Code Section 331(h)) small commercial customers, from the rates that were in effect on June 10, 1996 by providing a 10% bill credit. For such purpose, eligible customers shall include all residential customers, commercial customers in the Domestic and General Service (GS-1) rate groups.” (75 CPUC2d at p. 580.)

The complainants contend that §§ 368(a) and 330(w) mandate, without any exception or qualification, that “small commercial customers” shall receive a 10% rate reduction from rate levels that existed as of June 1996. They further allege that their maximum peak demand is, and always has been, less than 20 kilowatts. With this type of demand, the complainants allege that this fits them squarely within the definition of a “small commercial customer,” which is defined in § 331(h) as follows: “Small commercial customer means a customer that has a maximum peak demand of less than 20 kilowatts.” Despite their status as small commercial customers, the complainants allege that SCE failed and refused to provide the 10% rate reduction to the complainants since April 1998. The complainants assert that there are 27,877 SCE customers who are similarly

affected.³ The complainants allege that SCE's failure to provide the complainants with the rate reduction violates §§ 330(w), 331(h) and 368(a), the Commission's Orders and approved tariffs, and the Legislative intent of AB 1890.

SCE's Rule 1 defines a "small commercial customer" as: "Customers served under Schedules GS-1, TOU-GS-1 and TOU-EV-3." SCE's Rule 1 was approved in D.96-12-077 [70 CPUC2d 207]. The complainants assert that SCE's Rule 1 is in conflict with the definition of small commercial customer found in § 331(h). The complainants contend that since § 331(h) uses maximum peak demand of less than 20 kilowatts as the criterion for eligibility for the rate reduction, rather than eligibility based upon a rate schedule, the language of the statute must govern the eligibility for the mandated rate reduction. The complainants further assert that the Commission had no authority to create a special classification for SCE of what constitutes a small commercial customer, other than what is provided for in the statute.

The complainants also contend that when SCE submitted its Rule 1 definition of small commercial customer to the Commission for approval in R.94-04-031 and A.97-05-018,⁴ that SCE "presented false, incomplete and misleading written testimony to the Commission in order to get their Rule 1 definition approved." (Complaint, p. 10.) The complainants assert that SCE failed to include the GS-2 schedule as a rate schedule that served customers with

³ The complainants assert that there are approximately 428,845 small commercial accounts that receive the 10% rate reduction, and that the 27,877 customers who did not receive the rate reduction, make up about 6.5% of the small commercial customers who qualify for the rate reduction.

⁴ R.94-04-031 and A.97-05-018 were the proceedings in which D.96-12-077 and D.97-09-056, respectively, were issued.

a maximum demand of less than 20 kilowatts. Although the GS-2 schedule applies to customers with a maximum peak demand of 0 to 500 kilowatts, the complainants contend that GS-2 customers can and do have demands of less than 20 kilowatts, and that this schedule does not preclude customers with demands of less than 20 kilowatts from taking service under this schedule. The complainants contend that SCE failed to properly inform the Commission of this.

The issues that the complainants seek to have determined by the Commission are:

- Whether the complainants are “small commercial customers” as defined in § 331(h).
- Whether the complainants are entitled to the 10% rate reduction mandated by §§ 330(w) and 368(a).
- Whether SCE failed to provide the 10% rate reduction to the complainants.
- Whether the complainants are entitled to a refund of the difference between the amount they were actually charged, and the amount they would have been charged if the 10% rate reduction had been correctly applied.

SCE filed its answer to the complaint on May 22, 2002. SCE contends that the process leading up to the issuance of the rate reduction bonds was developed on an expedited 120-day process as mandated by § 841(e). This process involved the filing by SCE, and the other utilities, of applications for financing orders for authorization to issue the rate reduction bonds, protests to the application, discovery, workshops and comment, briefs, and comments on a proposed decision. On September 3, 1997, the Commission issued financing orders for

SCE, PG&E and SDG&E, which authorized the issuance of the revenue reduction bonds.

In D.97-09-056, which was SCE's financing order decision, the Commission authorized the issuance of up to \$3 billion of revenue reduction bonds to provide savings for the 10% rate reduction in AB 1890. D.97-09-056 also designated the group of SCE customers and rate schedules within the group that would receive the 10% rate reduction. (See 75 CPUC2d at p. 570, COL #32 at p. 578, and Ordering Par. #17 at p. 580.) These same customers are also required to repay the interest and principal and other costs associated with the issuance of the rate reduction bonds over a period of up to 10 years through a non-bypassable charge called the Fixed Transition Amount (FTA) charge.⁵

On October 9, 1997, SCE consented to the terms and conditions of D.97-09-056, and SCE's financing order became effective. On October 31, 1997, SCE filed Advice Letter 1253-E to establish Schedule RRB. This schedule designated the rate schedules that would be eligible for the 10% rate reduction.⁶ On December 4, 1997, SCE filed Advice Letter 1272-E to establish the FTA charges for residential and eligible small commercial customers. The FTA charges became effective on December 11, 1997, and SCE began providing the 10% rate reduction in January 1998.

SCE argues that in accordance with D.97-09-056, only those customers served on rate schedules in SCE's "Domestic and General Service (GS-1) rate

⁵ The FTA is also referred to as the Trust Transfer Amount in subsequent Commission decisions and on SCE's bills.

⁶ Schedule RRB described the 10% rate reduction as a "10% bill credit."

group” were eligible to receive the 10% rate reduction beginning January 1, 1998. SCE points out that rate schedule GS-2 is not within the GS-1 rate group. Since the complainants are served on Schedule GS-2, SCE contends that GS-2 customers are ineligible for the 10% rate reduction.

SCE denies that there is a conflict or inconsistency between SCE’s Rule 1 and § 331(h). SCE asserts that SCE’s Rule 1 simply lists the definitions used within SCE’s tariffs and the rate schedules incorporated in the GS-1 rate group. According to SCE, Schedule RRB lists all of the rate schedules eligible for the rate reduction. SCE contends that Schedule RRB and Rule 1 are entirely consistent with the provisions of D.97-09-056, and that SCE has complied with Commission orders.

SCE contends that the essence of the complainants’ argument is that the eligibility criteria adopted in D.97-09-056, and reflected in Schedule RRB, are inconsistent with § 331(h). SCE contends that such an argument amounts to an attempt to modify D.97-09-056, but no one sought timely rehearing or modification of D.97-09-056 on this issue. SCE also asserts that the complainants’ argument that they were improperly denied the rate reduction is an improper collateral attack on D.97-09-056 and is prohibited by § 1709.⁷ SCE seeks summary denial of the application on the basis that this issue has already been decided by the Commission.

SCE points out that the Commission can reconsider a prior decision under § 1708 provided the necessary requirements for reconsideration have been established. SCE asserts, however, that the complainants could have brought the

⁷ Section 1709 states: “In all collateral actions or proceedings, the orders and decisions of the commission which have become final shall be conclusive.”

complaint or a petition to modify D.97-09-056 long ago, but failed to do so. In addition, SCE asserts that the revenue reduction bond transaction was inadequately sized to provide the additional discounts which the complainants seek, and that the modification which the complainants seek is far beyond anything allowed under AB 1890 or the process governing modification of a final Commission decision. SCE also points out that § 841(c) provides in pertinent part that notwithstanding § 1708, the financing orders and the FTA shall be irrevocable and the Commission shall not have the authority to rescind, alter, or amend the financing order or to revalue or to revise for ratemaking purposes the transition costs or the costs of providing or recovering the transition costs, or to reduce or impair the amount of revenues.

Issues to be Discussed at the Prehearing Conference

A prehearing conference will be held on September 24, 2002, at 10:00 a.m., at the Commission's offices in San Francisco. The prehearing conference will discuss how this proceeding should be processed by the Commission.

Based on the complaint and the answer, the threshold question that faces the Commission is whether or not the Commission made a final determination of the issues presented in the complaint. The issue of eligibility for the 10% rate reduction was developed in A.97-05-006, the proceeding in which D.97-09-055 was issued. No one filed a timely application for rehearing or a petition for modification of D.97-09-055 on the issue of eligibility for the 10% rate reduction.

Resolution of the threshold question would involve an analysis of several relevant code sections. A review of §§ 841(c), 1709, 1731(b), 1732, and 1756 suggest that the Commission should proceed with the issuance of a decision addressing whether a final determination of the issues raised by the complaint has already been made by the Commission. If such a final determination was

made, the application of these code sections to this proceeding suggest that the complaint should be dismissed.

The prehearing conference will discuss whether this threshold question should be addressed by the Commission before any further action is taken on the complaint. If the Commission addresses this threshold question, that will determine what further action, if any, should be taken on the complaint. An opportunity for the parties to brief the applicability of these code sections to this threshold question should be provided, and a briefing schedule will be discussed at the prehearing conference. Parties may also raise at the prehearing conference other issues related to the processing of the complaint.

IT IS RULED that a prehearing conference in this complaint case shall be held on Tuesday, September 24, 2002 at 10:00 a.m., in the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, to discuss the issues described above.

Dated September 10, 2002, at San Francisco, California.

/s/ JOHN S. WONG

John S. Wong
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Setting a Prehearing Conference on all parties of record in this proceeding or their attorneys of record.

Dated September 10, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TTY# 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.